

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-253-E - ORDER NO. 1999-671
SEPTEMBER 22, 1999

IN RE: Application of Broad River Energy, LLC for) ORDER / MR
a Certificate of Environmental Compatibility) GRANTING
and Public Convenience and Necessity.) CERTIFICATE

This matter is before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Broad River Energy, LLC (“Company”) for a Certificate of Environmental Compatibility and Public Convenience and Necessity (“Certificate”) to construct and operate a generating plant for the production of electric power and energy to be located in the vicinity of Gaffney, Cherokee County, South Carolina. The Company filed its Application, which was dated June 7, 1999, pursuant to S.C. Code Ann., §§ 58-33-10 et. seq., (1976), (“The Siting Act”).

In accordance with the provisions of S.C. Code Ann., §§58-33-120 (3) (1976), the Company published notice of its intent to file the Application. In addition, the Company’s Application included certification that it served a copy of the Application on those governmental officials and such other persons as S.C. Code Ann., §58-33-120 (2) (1976) requires.

Upon receipt of the Company’s Application, the Commission’s Executive Director required the Company to publish a prepared Notice of Filing which described

the nature of the Application and advised all interested parties of the manner in which they might intervene or otherwise participate in this proceeding. The Company duly submitted an affidavit which demonstrated compliance with the Executive Director's instructions.

On June 23, 1999, the Commission issued its Order No. 1999-443 by which the Commission established dates for prefiling testimony and exhibits of the Company, Commission Staff and intervenors. The Company and the Commission Staff filed their intended direct testimony in compliance with the terms of Order No. 1999-443. Philip S. Porter, Consumer Advocate for the State of South Carolina, ("the Consumer Advocate"), originally intervened in this proceeding. Prior to the hearing in this matter, the Consumer Advocate indicated that he did not oppose the relief which the Company requested in its Application.

On July 14, 1999, the Company filed a motion in which it sought the Commission's permission to undertake preliminary site preparation activities in advance of the Commission's final review and decision on the merits of the Application. The Commission has the authority to grant such preliminary relief pursuant to S.C. Code Ann., §58-33-110 (1976). On August 4, 1999, the Commission issued Order No. 1999-549, by which the Commission authorized the Company to proceed with the site preparation activities. Order No. 1999-549 stated that the Company would proceed at its own risk in engaging in such activities pendent lite and that the temporary authorization did not constitute approval of the proposed site or the Company's intended facility.

On August 26, 1999, in accordance with S.C. Code Ann., §58-33-130 (1976), and the Commission's rules of practice and procedure, the Commission conducted an evidentiary hearing in this proceeding. Robert T. Bockman, Esquire, represented the Company; Florence P. Belser, Staff Counsel, represented the Commission Staff. The Company offered the testimony of Bryan E. Schueler; the Commission Staff presented the testimony of A.R. Watts. In addition to the testimony of those two witnesses, the administrative record of this proceeding includes the Company's Application, the various notices, pleading and orders, which this Order has previously identified, and discovery responses (some of which were submitted under terms of a confidentially agreement between the Company and the Consumer Advocate).

Upon full review of the evidence in this proceeding, the Commission herein grants the relief which the Company seeks and issues this Order as a Certificate of Environmental Compatibility and Public Convenience and Necessity. We base that decision on the following findings and conclusions.

FINDING OF FACT

1. Broad River Energy, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Northbrook, Illinois. The Company is qualified to transact business in the State of South Carolina.

2. The Company intends to construct and operate a three-unit simple cycle combustion turbine generating plant with a nominal net capacity of 500MW. The facility will be known as the Broad River Energy Center. The Company expects the Broad River Energy Center to be in commercial operation prior to June 2001. The Broad River

Energy Center will be located on a 60.35-acre tract east of the city of Gaffney in Cherokee County, South Carolina.

3. The Broad River Energy Center will utilize three combustion turbine generating units operating in simple cycle mode to produce approximately 500MW (nameplate rating) of electrical output ("The Facility"). Each of the combustion turbine units will be enclosed in its own weather-tight acoustical enclosure and each unit will have an individual exhaust stack. Package boilers fired with natural gas will be utilized for generating steam for power augmentation. A separate building will house control, maintenance and administrative operations. The site for the Broad River Center will include tanks for the storage of fuel oil, raw water and demineralized water.

4. The Facility will interconnect with the existing 230kV transmission lines of Duke Energy's transmission system which cross the southern portion of the site. A new switchyard on the site adjacent to the transmission lines will provide the interconnection.

5. The Facility will connect with the natural gas pipeline operated by Williams Gas Pipelines-Transco, which likewise crosses the southern portion of the site.

6. The Company will be an exempt wholesale generator ("EWG") under the rules and regulations of the Federal Energy Regulatory Commission ("FERC"). The Company has secured FERC's certification of its status as an EWG.

7. Under the terms of a Purchased Power Agreement dated December 31, 1998, (the "Agreement") the Company will sell and deliver exclusively to Carolina Power & Light Company ("CP&L") all the electric capacity and energy which the

Facility produces, net of the Facility's own auxiliary electrical requirements, and CP&L will purchase, receive, and pay for such electric power, and will use that power to meet the needs of its customers. The Agreement contains an initial term of fifteen (15) years which CP&L may extend for an additional five (5) year period.

8. The Facility will serve a portion of the peaking electric needs of CP&L. The simple cycle combustion turbine technology is the state of the art process technology for meeting this type of electric need. The low emissions of the combustion turbines when fired on either natural gas or distillate oil along with the fast start up times for the units have made combustion turbines the standard for peaking electric plants. The simple cycle combustion turbine technology is the most efficient alternative to meet Broad River's obligations under the Agreement.

9. The Company will be responsible for the Facility's interconnection to the gas pipeline and building a fuel oil storage tank. CP&L is responsible for all fuel transportation and supply contracts to get fuel to the Facility.

10. The Company will be responsible for interconnecting the Facility to the Duke Energy's transmission system. CP&L will be responsible for all transmission agreements and transmission costs for delivery of the energy to its system.

11. The Facility is needed to enable the Company to satisfy its obligations under the terms of the Agreement, which will assist CP&L to meet its customers' needs for peaking electric energy.

12. The Facility will be located on a sixty acre wooded site that is currently unused. The natural gas pipeline and electric transmission line corridors are within the

sixty acres, eliminating any off-site impacts associated with creating new utility corridors. The Company will obtain the necessary permits from the South Carolina Department of Health and Environmental Control (“DHEC”) for stormwater management and will follow DHEC’s requirements. The Company will obtain the appropriate air permit from DHEC and air quality modeling demonstrates that there are not significant impacts on air quality from the project. There are no negative environmental impacts as a result of the intended construction and operation of the project.

13. The Facility will receive water and wastewater service from the Board of Public Works, City of Gaffney. The Board will extend its existing lines a short distance to the eastern edge of the project site along S.C. Highway 329. By using the existing services and systems of the Board, there will be no adverse environmental impacts for the Facility’s water and wastewater requirements.

14. Neither the Company nor the Commission has received any adverse comments from any governmental agency responsible for environmental protection, land use planning, or other regulation of the site or Facility.

15. The Company and the Commission have satisfied all statutory requirements for notice and opportunity for hearing which S.C. Code Ann., §§ 58-33-10 et seq., (1976), describes.

CONCLUSIONS OF LAW

1. The Company’s obligations to provide peaking power under the Agreement and CP&L’s anticipated need for peaking power to serve its customers establish that there is a need for the Facility.

2. There are no adverse environmental impacts associated with the anticipated construction and operation of the Facility.

3. Considering the state of available technology and the nature and economies of the various alternatives and other pertinent considerations, the impact of the Facility on the environment is justified.

4. The Facility will serve the interests of system economy and reliability.

5. There is reasonable assurance that the Facility will conform to applicable State and local laws and regulations.

6. Public convenience and necessity require the construction of the Facility.

IT IS THEREFORE ORDERED THAT:

1. The Application of Broad River Energy, LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the construction and operation of the Broad River Energy Center be, and hereby is, approved.

2. Broad River Energy, LLC shall notify the Commission's Executive Director of the commercial operation of the Broad River Energy Center within ten (10) days of such operation.

3. This Order shall remain in full force and effect until further Order of the Commission:

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)